

Adopted	Rejected
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## COMMITTEE REPORT

YES:	18
NO:	8

### MR. SPEAKER:

*Your Committee on Ways and Means, to which was referred House Bill 1788, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning trade
- 3 regulations and consumer sales and credit.
- 4 Page 1, delete lines 1 through 16.
- 5 Delete pages 2 through 8.
- 6 Page 9, delete lines 1 through 18.
- 7 Page 10, between lines 38 and 39, begin a new paragraph and insert:
- 8 "SECTION 7. IC 7.1-6-2-6, AS AMENDED BY P.L.1-2002,
- 9 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 10 JULY 1, 2003]: Sec. 6. (a) The **Dick Doyle** youth tobacco education
- 11 and enforcement fund is established. The fund shall be administered by
- 12 the commission.
- 13 (b) Expenses of administering the fund shall be paid from money in
- 14 the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) Money in the fund shall be used for the following purposes:

(1) For youth smoking prevention education. The commission may contract with the state department of health or the office of the secretary of family and social services for youth smoking prevention education programs.

(2) For education and training of retailers who sell tobacco products. The commission may contract with education and training programs of the office of the secretary of family and social services, the division of mental health and addiction, enforcement officers, or a program approved by the commission.

(3) For the commission, for enforcement of youth tobacco laws.

SECTION 8. IC 7.1-6-2-8, AS ADDED BY P.L.204-2001, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) This section applies whenever a civil penalty payable to the **Dick Doyle** youth tobacco education and enforcement fund is imposed.

(b) The person liable for the civil penalty shall pay the full amount of the civil penalty to the commission within thirty (30) days after final judgment.

(c) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for a late penalty equal to the greater of the following:

(1) Twenty-five percent (25%) of the amount of the civil penalty imposed under IC 35-46-1.

(2) The lesser of the following:

(A) Twenty-five dollars (\$25) multiplied by the number of days that have elapsed after the date that the civil penalty was imposed by a court.

(B) Five thousand dollars (\$5,000).

(d) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for interest on the unpaid amount of the:

(1) civil penalty imposed by a court; and

1 (2) late penalty imposed under this section.  
 2 The interest rate is the adjusted rate of interest as determined under  
 3 IC 6-8.1-10-1 payable from the date that payment of the amount was  
 4 due.

5 (e) A person who fails to pay a civil penalty within the time  
 6 specified in subsection (b) is liable for the reasonable documented  
 7 out-of-pocket expenses incurred in pursuing collection efforts.

8 (f) The commission shall collect the following:

- 9 (1) Civil penalties imposed by a court.
- 10 (2) Late penalties imposed under this section.
- 11 (3) Interest imposed under this section.
- 12 (4) Reasonable documented out-of-pocket expenses incurred in
- 13 pursuing collection efforts.

14 (g) Late penalties and interest imposed under this section shall be  
 15 deposited in the **Dick Doyle** youth tobacco education and enforcement  
 16 fund established by section 6 of this chapter."

17 Page 13, line 32, delete "who is unable to" and insert "**shall**".

18 Page 13, line 37, delete ";" and insert ".".

19 Page 13, delete line 38.

20 Page 13, line 39, after "(b)" insert "**Each day during which a**  
 21 **retailer fails to produce an invoice or other evidence under**  
 22 **subsection (a) constitutes a separate violation of this section.**

23 (c) **The department of state revenue may revoke the registration**  
 24 **certificate issued under IC 6-7-1-16 to a retailer that violates**  
 25 **subsection (a).**

26 (d) **This subsection applies in addition to or instead of any other**  
 27 **civil or criminal penalty. The department may impose on a retailer**  
 28 **that violates subsection (a) a civil penalty that does not exceed the**  
 29 **greater of:**

30 (1) **five hundred percent (500%) of the retail value of the**  
 31 **cigarettes described in subsection (a); or**

32 (2) **five thousand dollars (\$5,000);**

33 **for each violation.**

34 (e)".

35 Page 14, line 2, delete "(c)" and insert "(f)".

36 Page 14, delete lines 9 through 19, begin a new paragraph and  
 37 insert:

38 **"(g) Civil penalties collected under this chapter shall be**

1       **deposited as follows:**

2               **(1) Seventy percent (70%) to the enforcement and**  
 3               **administration fund established under IC 7.1-4-10.**

4               **(2) Thirty percent (30%) to the state general fund for the use**  
 5               **of the department of state revenue.**

6               SECTION 10. IC 35-46-1-10, AS AMENDED BY P.L.204-2001,  
 7       SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8       JULY 1, 2003]: Sec. 10. (a) A person who knowingly:

9               (1) sells or distributes tobacco to a person less than eighteen (18)  
 10              years of age; or

11              (2) purchases tobacco for delivery to another person who is less  
 12              than eighteen (18) years of age;

13       commits a Class C infraction. For a sale to take place under this  
 14       section, the buyer must pay the seller for the tobacco product.

15              (b) It is not a defense that the person to whom the tobacco was sold  
 16       or distributed did not smoke, chew, or otherwise consume the tobacco.

17              (c) The following defenses are available to a person accused of  
 18       selling or distributing tobacco to a person who is less than eighteen  
 19       (18) years of age:

20              (1) The buyer or recipient produced a driver's license bearing the  
 21       purchaser's or recipient's photograph, showing that the purchaser  
 22       or recipient was of legal age to make the purchase.

23              (2) The buyer or recipient produced a photographic identification  
 24       card issued under IC 9-24-16-1, or a similar card issued under the  
 25       laws of another state or the federal government, showing that the  
 26       purchaser or recipient was of legal age to make the purchase.

27              (3) The appearance of the purchaser or recipient was such that an  
 28       ordinary prudent person would believe that the purchaser or  
 29       recipient was not less than the age that complies with regulations  
 30       promulgated by the federal Food and Drug Administration.

31              (d) It is a defense that the accused person sold or delivered the  
 32       tobacco to a person who acted in the ordinary course of employment or  
 33       a business concerning tobacco:

34              (1) agriculture;

35              (2) processing;

36              (3) transporting;

37              (4) wholesaling; or

38              (5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-4(c), civil penalties collected under this section must be deposited in the **Dick Doyle** youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 11. IC 35-46-1-10.2, AS AMENDED BY P.L.1-2001, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100).

(3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500).

A retail establishment may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours

1 for each specific business location.

2 (b) It is not a defense that the person to whom the tobacco was sold  
3 or distributed did not smoke, chew, or otherwise consume the tobacco.

4 (c) The following defenses are available to a retail establishment  
5 accused of selling or distributing tobacco to a person who is less than  
6 eighteen (18) years of age:

7 (1) The buyer or recipient produced a driver's license bearing the  
8 purchaser's or recipient's photograph showing that the purchaser  
9 or recipient was of legal age to make the purchase.

10 (2) The buyer or recipient produced a photographic identification  
11 card issued under IC 9-24-16-1 or a similar card issued under the  
12 laws of another state or the federal government showing that the  
13 purchaser or recipient was of legal age to make the purchase.

14 (3) The appearance of the purchaser or recipient was such that an  
15 ordinary prudent person would believe that the purchaser or  
16 recipient was not less than the age that complies with regulations  
17 promulgated by the federal Food and Drug Administration.

18 (d) It is a defense that the accused retail establishment sold or  
19 delivered the tobacco to a person who acted in the ordinary course of  
20 employment or a business concerning tobacco:

21 (1) agriculture;

22 (2) processing;

23 (3) transporting;

24 (4) wholesaling; or

25 (5) retailing.

26 (e) As used in this section, "distribute" means to give tobacco to  
27 another person as a means of promoting, advertising, or marketing the  
28 tobacco to the general public.

29 (f) Unless a person buys or receives tobacco under the direction of  
30 a law enforcement officer as part of an enforcement action, a retail  
31 establishment that sells or distributes tobacco is not liable for a  
32 violation of this section unless the person less than eighteen (18) years  
33 of age who bought or received the tobacco is issued a citation or  
34 summons under section 10.5 of this chapter.

35 (g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under  
36 this section must be deposited in the **Dick Doyle** youth tobacco  
37 education and enforcement fund (IC 7.1-6-2-6).

38 SECTION 12. IC 35-46-1-11.3, AS AMENDED BY P.L.204-2001,

SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.3. (a) This section does not apply to advertisements that are less than fourteen (14) square feet and posted:

- (1) at street level in the window or on the exterior of a business property or establishment where tobacco products are manufactured, distributed, or sold; or
- (2) on vehicles.

(b) This section does not apply to advertisements that are placed on a fixed, permanent marquee sign that is located on the retailer's property where tobacco products are sold.

(c) A person may not advertise or cause to be advertised tobacco products on a billboard or an outdoor advertisement where the tobacco advertising occupies an area that exceeds fourteen (14) square feet. The alcohol and tobacco commission may adopt rules under IC 4-22-2 to determine how to measure the tobacco product advertising on a sign that contains both tobacco product advertising and advertising that is not tobacco related. The rules may not allow the frame of the sign or other structural parts that only serve to support the sign to be included in the tobacco advertising measurement.

(d) A person who violates this section commits a Class C infraction. An advertisement that is in violation of this section must be removed not more than ten (10) days after a citation or summons has been issued. Notwithstanding IC 34-28-5-4(c), if an advertisement that is in violation of this section is not removed not more than ten (10) days after a citation or summons has been issued, a civil judgment for an infraction committed under this section must include a civil penalty of one hundred dollars (\$100) for each day that the advertisement was in violation of this section.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the **Dick Doyle** youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 13. IC 35-46-1-11.5, AS AMENDED BY P.L.1-2001, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.5. (a) Except for a coin machine that is placed in or directly adjacent to an entranceway or an exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than eighteen (18) years of age, this section does not apply to a coin machine that is located in the following:

(1) That part of a licensed premises (as defined in IC 7.1-1-3-20) where entry is limited to persons who are at least eighteen (18) years of age.

(2) Private industrial or office locations that are customarily accessible only to persons who are at least eighteen (18) years of age.

(3) Private clubs if the membership is limited to persons who are at least eighteen (18) years of age.

(4) Riverboats where entry is limited to persons who are at least twenty-one (21) years of age and on which lawful gambling is authorized.

(b) As used in this section, "coin machine" has the meaning set forth in IC 35-43-5-1.

(c) Except as provided in subsection (a), an owner of a retail establishment may not:

(1) distribute or sell tobacco by use of a coin machine; or

(2) install or maintain a coin machine that is intended to be used for the sale or distribution of tobacco.

(d) An owner of a retail establishment who violates this section commits a Class C infraction. A citation or summons issued under this section must provide notice that the coin machine must be moved within two (2) business days. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the owner of the retail establishment has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the owner of the retail establishment has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(3) If the owner of the retail establishment has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days for the same machine, the coin machine shall be removed or impounded by a law enforcement officer having jurisdiction where the violation occurs.

An owner of a retail establishment may not be issued a citation or summons for a violation of this section more than once every two (2)



1 business days for each business location.

2 (e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under  
3 this section must be deposited in the **Dick Doyle** youth tobacco  
4 education and enforcement fund established under IC 7.1-6-2-6.

5 SECTION 14. IC 35-46-1-11.7, AS AMENDED BY P.L.1-2001,  
6 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
7 JULY 1, 2003]: Sec. 11.7. (a) A retail establishment that has as its  
8 primary purpose the sale of tobacco products may not allow an  
9 individual who is less than eighteen (18) years of age to enter the retail  
10 establishment.

11 (b) An individual who is less than eighteen (18) years of age may  
12 not enter a retail establishment described in subsection (a).

13 (c) A retail establishment described in subsection (a) must  
14 conspicuously post on all entrances to the retail establishment a sign in  
15 boldface type that states "NOTICE: It is unlawful for a person less than  
16 18 years old to enter this store.".

17 (d) A person who violates this section commits a Class C infraction.  
18 Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction  
19 committed under this section must be imposed as follows:

20 (1) If the person has not been cited for a violation of this section  
21 in the previous ninety (90) days, a civil penalty of fifty dollars  
22 (\$50).

23 (2) If the person has had one (1) violation in the previous ninety  
24 (90) days, a civil penalty of one hundred dollars (\$100).

25 (3) If the person has had two (2) violations in the previous ninety  
26 (90) days, a civil penalty of two hundred fifty dollars (\$250).

27 (4) If the person has had three (3) or more violations in the  
28 previous ninety (90) days, a civil penalty of five hundred dollars  
29 (\$500).

30 A person may not be cited more than once every twenty-four (24)  
31 hours.

32 (e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under  
33 this section must be deposited in the **Dick Doyle** youth tobacco  
34 education and enforcement fund established under IC 7.1-6-2-6.".

35 Renumber all SECTIONS consecutively.  
(Reference is to HB 1788 as introduced.)

**and when so amended that said bill do pass.**

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Representative Crawford